

**CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK (I-Bank)
INFRASTRUCTURE STATE REVOLVING FUND (ISRF) PROGRAM**

STAFF REPORT

**REQUEST FOR AMENDMENTS, EASEMENTS AND RELATED ITEMS FOR AN
EXISTING ISRF FINANCING**

REQUESTED ACTION AND BACKGROUND

REQUEST

Staff requests the following actions from the Board:

- approve the I-Bank's acquisition of property to be used for parking, satisfying the Orange County High School of the Art's ("OCHSA," an ISRF Program borrower) existing contractual obligation to provide property for a total of 462 parking spaces for the school;
- approve the release of certain property owned by the I-Bank and leased to OCHSA to facilitate the transfer and use of such property by the City of Santa Ana;
- approve and authorize the execution of certain easements affecting the property; and
- authorize amendments to the financing agreements and related additional documents consistent with the addition and removal of property and granting of the requested easements.

BACKGROUND

Orange County High School of the Arts:

The Orange County High School of the Arts ("OCHSA") is a non-profit charter school located in Santa Ana, California ("City") focused on performing arts and college preparatory academics. OCHSA received its charter approval on January 28, 2000, from the Santa Ana Unified School District and a renewal of its charter in July 2005. The U.S. Department of Education and the National Endowment for the Arts have identified the school as a model arts education program. The school has been ranked in the top ten percent of high schools in the State of California, and is one of the top five highest ranking high school academic programs in Orange County.

Summary of ISRF Program Financing: On June 30, 2000, the I-Bank Board approved Resolution 00-37 authorizing \$20,000,000 of ISRF Program financing to OCHSA for the purchase of the public development facility known as the Orange County High School of the Arts Educational Facility ("Project") located at the following addresses (shown on the map attached as Attachment B hereto, the "Property"):

- 1000, 1010, and 1018 N. Main Street (Lot 2);
- 915 and 919 Broadway (Lot 5)
- 921 N. Sycamore Street (Lot 3a)
- 900 N. Sycamore Street (Lot 6)

OCHSA and the I-Bank entered into an Acquisition Agreement and a Facility Lease ("Financing Agreements") both dated September 1, 2000, resulting in the transfer of title to the Property to the I-Bank, and the lease of the Property from the I-Bank to OCHSA. The Financing Agreements include an obligation of OCHSA to transfer sufficient additional property for a total 462 parking spaces (when combined with the parking spaces available on the Property) at a later date. The Property and the obligation to provide property for parking spaces constituted the consideration provided to the I-Bank for the financing.

The I-Bank and OCHSA have also previously entered into two separate amendments. On September 30, 2002, pursuant to Resolution 02-41, the Board approved a first amendment to the Facility Lease restructuring the amortization of the financing and obligating OCHSA to create and maintain an operating reserve account. Consistent with the delegation of authority in Resolution 05-11, the Executive Director authorized a second amendment to change OCHSA's payment schedule from semiannual to monthly payments. Both the First and Second Amendments served to assist OCHSA with cash flow problems which were affecting its ability to make timely payments. OCHSA has recently resumed a semiannual payment schedule consistent with the second amendment and is currently in compliance with all terms and conditions of the Financing Agreements, as amended. As of April 20, 2009, OCHSA's current outstanding ISRF Program obligation is \$18,582,878.14.

Development Project Summary:

The Property and Project are located across the street from 17 adjoining parcels (approximately a 4.330 acre city block) owned by One Broadway Plaza ("OBP"). On August 2, 2004, the City conditionally approved a request by OBP to develop a 37-story office building and 8-story parking garage known as the One Broadway Plaza Project ("OBP Project"). The OBP Project is expected to provide economic development benefits both to the downtown Santa Ana area as well as directly to OCHSA and the Property. Specifically, OBP expects the OBP Project to have the tallest building in Orange County and the largest office space in downtown Santa Ana, and the OBP Project is expected to revitalize downtown Santa Ana. OCHSA's staff believes the existence of the new office building will result in an increase in property values and larger financial contributions due to the increased public exposure resulting from people coming to and from the new office building so close to the school. Additionally, the construction of the OBP Project includes construction of new utilities at no cost to OCHSA for the Property at the same time the utilities are constructed for the OBP Project.

The City's approval of the OPB Project contains conditions for development including obtaining certain easements for utilities, drainage, emergencies, and general access. The City's conditions also require privatizing a street bordering the OCHSA campus, Sycamore Street, for use as a tunnel to travel underneath a parking garage for the OPB Project. Many of the easements will impact and encumber the Property.

The OBP Project and the City's approval thereof received some initial opposition resulting in the OBP Project, and the City's approval thereof, being subject to a referendum vote. On April 5, 2005, the voters of Santa Ana approved the project by 56% of the voters.

Board Approval Required:

On February 24, 2009, the Board adopted Resolution 09-05 clarifying the I-Bank's Executive Director's authority to approve and execute certain amendments and documents related to ISRF Program financings that are not material or substantive. However, Resolution 09-05 states that, among other listed items, "the repayment/security pledged to repay the financing" is a material term and any amendments thereto must receive approval from the Board. The actions and amendments contemplated in this staff report cumulatively affect the security for repayment and for that reason are being brought to the Board for consideration.

ANALYSIS OF REQUESTED ACTION

ACQUISITION OF PROPERTY FOR PARKING

As contemplated in the Financing Agreements, the full scope of the property to be acquired by the I-Bank and leased to OCHSA has always intended to include property sufficient to achieve a total of 462 parking spaces and be in compliance with City zoning requirements. Subsequent to the date of the Financing Agreements, OCHSA continued to be obligated to transfer additional property for parking purposes ("Parking Lot Property"). Specifically, Section 2 of the Acquisition Agreement requires the "future conveyance of additional property reasonably acceptable to the [I-Bank]" to be transferred by OCHSA through one or more grant deeds. As shown on the map on Attachment B, hereto, OCHSA is now in a position to acquire and transfer the following as the Parking Lot Property to the I-Bank:

- Lot 1 known as the parking portion of 1104 and 1110 N. Sycamore Street;
- Lot 3 known as 912 N. Main Street and 915 N. Sycamore Street;
- Lot 4 known as 839 N. Broadway and 912 N. Sycamore Street; and
- Lot 7 known as 201 and 207 W. Washington Avenue.

REMOVAL OF PROPERTY

Pursuant to Section 2.06 of the Facility Lease, OCHSA may request portions of the Property be removed from the scope of property that is owned by the I-Bank and subject to the Facility Lease. Specifically, property may be removed if certain conditions exist, including, but not limited to the following summarized provisions of the Facility Lease:

- Delivery to the I-Bank of a certificate stating that the annual fair rental value of the Facility after the removal is at least equal to the maximum annual rental payments on the basis of an appraisal conducted by a member of the American Institute of Real Estate Appraisers or the American Society of Appraisers;
- Delivery to the I-Bank of an opinion of counsel to the effect that the amendments contemplating the removal have been duly authorized, executed and delivered and constitute the valid and binding obligations of the Lessee enforceable in accordance with their terms.

On April 13, 2009, OCHSA formally submitted a request to remove portions of the Property from the Facility Lease. Specifically, OCHSA has requested a portion of Sycamore Street (expected to be privatized and temporarily closed for the construction and operation of the OBP Project parking garage) and certain “curb cuts” (necessary to create a traffic round-a-bout at the intersection of 10th Street and Sycamore Street) be removed. (See Attachment C) Consistent with the requirements of Section 2.06 of the Facility Lease, OCHSA provided an independent appraisal of the Property completed by Richard West, an MAI appraiser of CB Richard Ellis. The appraisal notes that the Property will continue to be worth approximately \$26.9M following the removal of the requested property. Removing the requested property facilitates the easement process required by the City for the OBP Project while maintaining sufficient security for the I-Bank’s \$20 million financing, and use of the Property for the I-Bank and financing purposes. The requested property removal and documents and certificates related thereto are consistent with the requirements of Section 2.06 of the Facility Lease. Approval of the removal of the property will also require the I-Bank to deed the removed property to OCHSA and reflect the change of the scope of property in the amendments to both the Acquisition Agreement and the Facility Lease.

EASEMENTS

As a condition to construct the OBP Project, the City is requiring OBP to obtain a variety of easements for utilities, storm drainage, emergency fire access, and related purposes. Due to the proximity of the OBP project to the Property, many of the proposed easements affect and will encumber the Property. Specifically, the following easements (“Easements”) are being requested to be approved and granted by the I-Bank as the owner of the Property:

1. Utilities and Access: Grants a 20’ easement along the western edge of the OCHSA main school property to OBP for the installation, repair and/or

maintenance of utilities (water, sewer, electrical, gas, cable, etc) for use by the OBP Project, the Property, and other adjacent properties. The easement agreement also requires OBP to install new utilities, including a new private sewer system, for the Property. (See Attachment D for a map of the 20' easement.)

2. Drainage: Grants an easement to OBP for the construction and use by OBP and adjacent property owners of a gutter-like storm drainage system across OCHSA's main school parking lot within a 20' wide easement.
3. Non-Buildable Yard: Easement prohibits building anything, with the exception of surface parking and property walls, on the 20' easement described above under "Utilities and Access."
4. Cross Lot Ingress and Egress and Emergency Fire Access: a) grants emergency services over and across the Property for fire and police emergency services, and b) adjacent property owners grant each other the right of access over portions of property not occupied by building improvements as required by the City.

There will also be an easement granted to the City over a portion of the corners and gutters at the intersection of 10th Street and Sycamore Street for the construction of the traffic circle. This easement will affect the Property, but will be granted by OCHSA rather than the I-Bank as OCHSA will be the owner of the corners and gutters following the transfer of property to OCHSA pursuant to the Removal of Property. It is expected that the traffic circle will ultimately be dedicated in full to the City.

The construction related to the Easements is scheduled to begin this summer and following the completion of all of the remainder of City's conditions, the OBP Project will begin to pull permits and commence construction. In the event the OBP Project does not proceed, the City may determine to accept a rededication of Sycamore Street as a public right of way and, in such an event, all of the Easements will terminate.

APPROVAL OF AMENDMENTS, EASEMENTS AND RELATED ADDITIONAL DOCUMENTS

The proposed transfer of title of property and future encumbrances necessitate amendments to both the Acquisition Agreement and the Facility Lease to amend the scope of property owned by the I-Bank and leased to OCHSA. The proposed transfer of title and future encumbrances will also necessitate the execution of certain deeds and certificates related to the transfer of property and granting of the Easements. Deeds and additional certificates related to the transfer of title for the Parking Lot Property, curb cuts and Sycamore Street property transactions will be executed and finalized concurrently with the execution and delivery of the Easements and amendments.

STAFF RECOMMENDATION

Staff recommends approval of Resolution 09-16 subject to the conditions listed in Attachment A hereto and included therein.

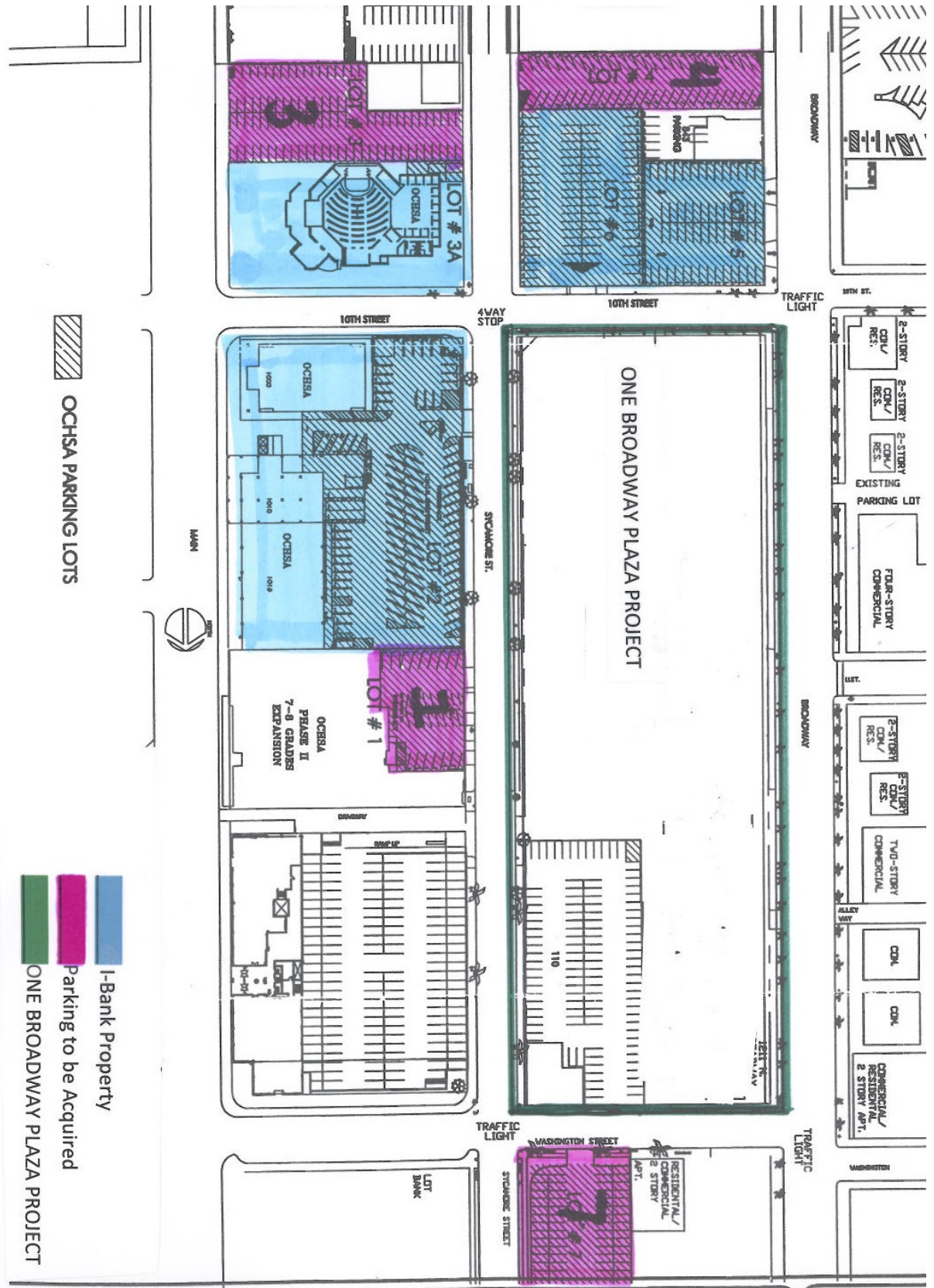
Attachment A
Conditions of Approval

The execution and delivery of the Amendments, deeds, and Easements by the I-Bank are conditioned upon the delivery to the I-Bank of the following:

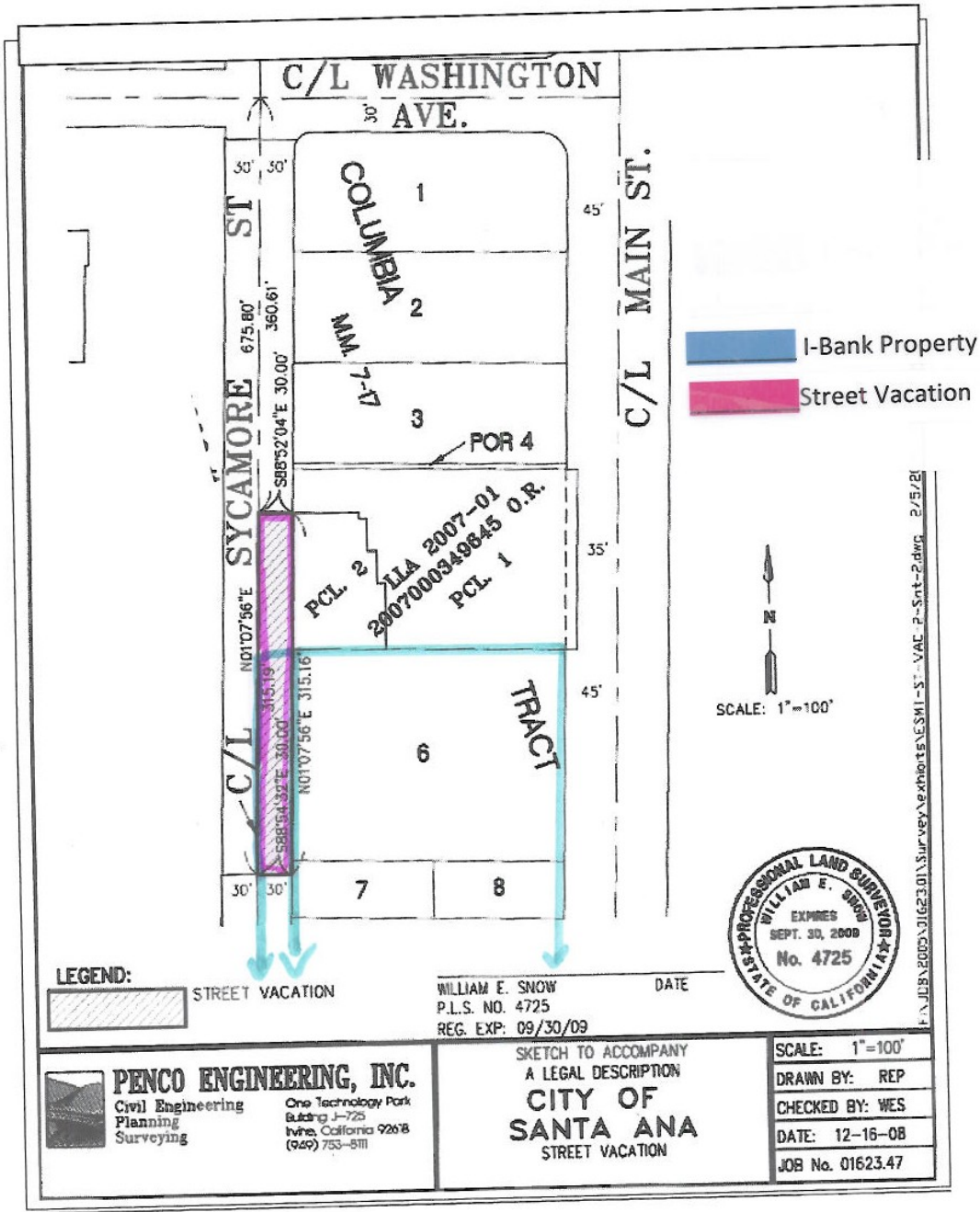
1. Escrow Instructions acceptable to the I-Bank;
2. Title to the Parking Lot Property and related title insurance policies acceptable to the I-Bank;
3. Agreement by OCHSA to pay for all title and escrow fees.
4. Deeds transferring title of the Parking Lot Property acceptable to the I-Bank;
5. Resolution of the Orange County High School of the Arts Foundation acceptable to the I-Bank confirming the continuation of the Guaranty Agreement dated October 30, 2000 subsequent to the execution of the amendments to the Financing Agreements.
6. Written confirmations from the City of Santa Ana and the Redevelopment Agency that the Parking Lot Property is a) sufficient to support 462 spaces when added to the current property owned by the I-Bank and, b) that the striping required to create the 462 spaces complies with all applicable City Code requirements.

ATTACHMENT B

I-BANK PROPERTY AND PROPERTY TO BE ACQUIRED FOR PARKING



ATTACHMENT C
REQUEST FOR REMOVAL
(Street Vacation)



ATTACHMENT D
EASEMENT MAP

